IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEREK C. DARDEN, Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 05-2118
LAURIE, et al. Defendants.	:	

MEMORANDUM AND ORDER

YOHN, J. January _____, 2006

This civil rights suit arises out of a prisoner's claim that prison officials failed to provide him with proper and adequate medical treatment after he suffered a fall down a flight of prison stairs.

Plaintiff Derek C. Darden, a prisoner at the Bucks County Correctional Facility, who is now being housed at the Bucks County Rehabilitation Center in Doylestown, has brought this *pro se* action under 28 U.S.C. § 1983 against five defendants, including two nurses employed by the Bucks County Department of Corrections, Laurey Turner and Joan Crowe; two private physicians, Drs. Richard A. Goldberg and David Davis; and the Director of the Bucks County Department of Corrections Harris Gubernick. Darden alleges that by failing to provide him with adequate and proper treatment, defendants violated the Eighth Amendment's prohibition of cruel and unusual punishment, made applicable to the states by the Fourteenth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 105 (1976).

There are several motions presently before the court. Defendants Goldberg and Davis move to dismiss the complaint against them for lack of subject matter jurisdiction, arguing that there is no federal question under 18 U.S.C. § 1331 because Darden's facts do not allege a cause

of action under 28 U.S.C. § 1983. Turner, Crowe, Davis, and Gubernick also move to dismiss the complaint for failure to state a claim upon which relief can be granted, on the ground that the malpractice alleged does not constitute an Eighth Amendment violation. For the reasons set forth below, I will grant defendants' motions to dismiss.[1]

I. BACKGROUND[2]

While in prison, Darden alleges that he slipped and fell down eleven steel and concrete steps, and then slammed into a concrete floor on April 4, 2004. At the time of the fall, Nurse Turner and other prison personnel responded to the scene. Darden told her and the other prison officials that he was in serious pain, was going in and out of consciousness, and could not move. Prison officials then moved him onto a back board and returned him to his cell, where he was allegedly placed onto his bed as if he was "just a piece of meat." Darden explained to the prison officials that he was in serious pain, and was moved to another cell block where he was placed in lock down. Darden alleges he was not placed in a neck brace or examined before being moved by prison staff, no paramedics were called, and he was not taken to the prison's dispensary or the hospital. Turner's "neglect" to use professional judgment, Darden alleges, could have caused him further injury.

In addition, Darden asserts that Head Nurse Crowe, Drs. Davis and Goldberg, and Director Gubernick provided inadequate treatment after the fall. According to his complaint and

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[1]In the alternative, defendants Crowe and Turner also moved for summary judgment under Federal Rule of Civil Procedure 56. However, as I will grant their motions to dismiss, their motions for summary judgment are moot.

[2]The foregoing factual account accepts all allegations in the complaint, plaintiff's exhibits to his complaint (Doc. #6), and plaintiff's amended complaint supplementing his original complaint (Doc. #15), as true. *See Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996).

the exhibits to his complaint,[3] Darden first saw Dr. Davis on April 8, 2004, when he was examined and scheduled for an x-ray. On April 9, 2004, Darden received an x-ray, and saw Dr. Davis again on April 14, 20, 23, 30 and May 3, 7, 17, 25. These visits were set up through sick call requests to the nurses, including Head Nurse Crowe. During these visits, Dr. Davis prescribed medication and recommended that Darden lose weight and exercise his legs, but allegedly refused to provide Darden with a cane, wheelchair, or walker. However, Darden alleges his pain continued, at times radiating down his arms and legs, and causing his hands to tremble. At that point, Dr. Davis changed Darden's medication and put him on bed rest. The doctor also recommended approval for a neck brace. On June 3, 2004, Darden was still in "extreme pain" and was sent out to Dr. Richard Goldberg, an orthopedic surgeon at Abington Memorial Hospital, who had plaintiff undergo an MRI on June 8, 2004. Darden saw Dr. Davis on June 21 for the results of the MRI, and was told that he had a pre-existing condition with his upper and lower vertebras, and it was likely that the fall agitated the problem. On June 24, he saw Dr. Goldberg, who stated that he did not see anything wrong, and that any problems would likely go away, despite that Darden was still in "sometimes extreme and excruciating pain." Darden claims these reports were "deceptive." Darden continued getting medication for his back pain until he was transferred out of the jail to the rehabilitation center on August 9, 2004.

Finally, Darden alleges that Director Gubernick committed "extreme indifference" in failing to make sure Darden received the proper medical care. While Darden admits that he received medical attention during and after the time he filed grievances with Gubernick, and that

[3]The court granted Darden permission to amend his complaint on July 29, 2005 and plaintiff filed several amendments, including exhibits to his complaint on September 26, 2005.

he also received responses from Gubernick, he argues that Gubernick failed to use his authority to "seriously" check into Darden's grievances by passing them back to the medical department. In addition, Gubernick allegedly let Darden be moved to another facility "where he had to seek medical treatment on his own."

As a result of the fall, Darden states that he suffers from severe pain in his shoulders, back, arms, and legs, as well as headaches, dizziness, and memory loss. He states that he is not able to seek employment or to have normal functioning, and the lack of care "may have caused [him] further damage." Due to defendants alleged "wanton negligence," Darden seeks monetary, compensatory and punitive damages, including damages for his "distress, mental anguish, and pain and suffering."[4]

II. SUBJECT MATTER JURISDICTION

Davis and Goldberg both filed motions to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction. By alleging violations of 42 U.S.C. § 1983, which provides redress to individuals who have suffered constitutional injuries inflicted under color of state law,[5] this

[4]In order to assist plaintiff because of his complaints about continuing pain and suffering, and knowing the difficult burden plaintiff would have to meet to sustain his claim, the court during pretrial proceedings suggested to the county defendants that they make arrangements for plaintiff to be examined by his private physician. The county defendants agreed to do this and an appointment was scheduled for August 29, 2005 before Dr. Ratini, who had previously treated plaintiff as a private patient. Unfortunately, Dr. Ratini refused to examine plaintiff because he stated that he considered plaintiff to be a new patient and he was not taking any new patients at that time. By letter of September 1, 2005, the court advised plaintiff that if he could provide the name and address of any other doctor that plaintiff would suggest for his independent examination, the county defendants would still be willing to accommodate his request for such an examination. Plaintiff never responded with the name of another doctor that he would select.

[5]Section 1983 states, in pertinent part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the

court assumes, as do defendants, that Darden is asserting this court has federal question jurisdiction under 28 U.S.C. § 1331.[6] Davis and Goldberg contend no federal question jurisdiction exists because Darden has no claim under § 1983: they argue that there is no constitutional violation under the Eighth Amendment alleged, and that in any event, they are not state actors. For the following reasons I will grant defendants' motions to dismiss pursuant to Rule 12(b)(1).[7]

A. Legal Standard for Motions to Dismiss Pursuant to Rule 12(b)(1)

Generally, when a party makes a "factual" attack on jurisdiction, the court is permitted to weigh the facts alleged in the pleadings filed to date to determine the existence of federal jurisdiction. *See Mortensen v. First Federal Savings & Loan Association*, 549 F.2d 884, 891 (3d Cir. 1977). Darden, whose complaint must be construed liberally because he is proceeding *pro se*, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), bears the burden of establishing that federal jurisdiction exists. *Berardi v. Swanson Memorial Lodge*, 920 F.2d 198, 202 (3d Cir. 1990) (citation omitted). Nonetheless, the threshold showing needed to withstand a Rule 12(b)(1) motion to dismiss upon a factual analysis is very low, *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926

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jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.

[6]Darden does not explicitly provide a basis for jurisdiction in his complaint. Davis and Goldberg both assume in their motions to dismiss that Darden is asserting jurisdiction under § 1331. Section 1331 can provide jurisdiction to the federal district courts in a § 1983 action, because it provides district courts with original jurisdiction of over civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331.

[7]The court also attempted to secure an attorney for plaintiff from the Prisoner Pro Se Civil Rights Panel of the Eastern District of Pennsylvania, but was unsuccessful.

F.2d 1406, 1409 (3d Cir. 1991), and dismissals for lack of subject matter jurisdiction are granted "grudgingly." *Harrison v. Local 54*, 518 F.2d 1276, 1283 (3d Cir. 1975). Further, when the issue of subject matter jurisdiction is intertwined with factual questions that go to the merits of plaintiff's case, the claim may be dismissed only if the allegations are "'made solely for the purpose of obtaining jurisdiction," or are "'wholly insubstantial and frivolous.'" *Kulick v. Pocono Downs Racing Ass'n,* 816 F.2d 895, 898-899 (3d Cir. 1987) (quoting *Bell v. Hood,* 327 U.S. 678, 682 (1946)). Dismissal for lack of subject matter jurisdiction is not warranted simply because the legal theory alleged is probably false; it is appropriate only where the federal claim is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Id.* at 899 (quoting *Indian Nation v. County of Oneida,* 414 U.S. 661, 666 (1974)).

B. Sufficiency of Plaintiff's Legal Theory

The gravamen of Darden's § 1983 action is that Drs. Goldberg and Davis subjected him to cruel and unusual punishment in violation of the Eighth Amendment. Because an inmate must rely on prison officials for their medical care, denial of same can result in pain and suffering that rises to the level of a constitutional violation. *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976). However, the law is clear that failure to provide adequate medical treatment is a violation of the Eighth Amendment only when it results from "deliberate indifference to a prisoner's serious illness or injury." A review of Darden's complaint against Drs. Davis and Goldberg and its attached exhibits reveals that Darden's allegations are so insubstantial as to not involve a federal controversy.

In order to allege an Eighth Amendment violation an inmate must allege both an

objective element – that the deprivation was sufficiently serious – and a subjective element – that a prison official acted with a sufficiently culpable state of mind, i.e. deliberate indifference." *Nami v. Fauver*, 82 F.3d 63, 67 (3d Cir. 1996) (citing *Wilson v. Seiter*, 501 U.S. 294, 304 (1991)). The first element requires that the prisoner's medical "condition must be such that a failure to treat can be expected to lead to substantial and unnecessary suffering, injury or death." *Colburn v. Upper Darby Township*, 946 F.2d 1017, 1023 (3d Cir. 1991). "Moreover, the condition must be 'one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.'" *Id.* (quotations omitted). In this instance, Darden has stated sufficient allegations that he had a serious medical need (*see, e.g.*, *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004) (finding serious back pain satisfies this requirement)).

Regarding the second element, however, Darden's allegations against Drs. Davis and Goldberg are completely devoid of merit. The Supreme Court has held that when a prison official commits an act or omission that does not purport to be "punishment," there must be more than an ordinary lack of due care; there must be deliberate indifference, or the "unnecessary and wanton infliction of pain." *Estelle*, 429 U.S. at 104. In *Farmer v. Brennan*, 511 U.S. 825 (1994), the Supreme Court made clear that the required state of mind is more than negligence in diagnosing or treating a medical condition. 114 U.S. at 835. Rather, the test for deliberate indifference is subjective recklessness, and it requires that the official "knows of and disregards an excessive risk to inmate health or safety; the official must be both aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837.

In addition, allegations of malpractice do not raise issues of a constitutional dimension. *Estelle*, 429 U.S. at 106. "Simple malpractice under a common law negligence standard, without some more culpable state of mind, is not inconsistent with evolving notions of decency merely because it occurs within the four walls of a prison." *Sample v. Diecks*, 885 F.2d 1099, 1109 (3d Cir. 1989). "Inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.'" *Estelle*, 429 U.S. at 105-106. Similarly, a prisoner's mere objection to the medical treatment provided does not support an Eighth Amendment claim, and no claim is stated merely because one doctor disagrees with another doctor's professional judgment. *White v. Napoleon*, 897 F.2d 103, 110 (3d Cir. 1990).

Here, Darden's complaint and its exhibits, even taken in a light most favorable to Darden, do not make out a deliberate indifference claim. Darden does not allege that the doctors had actual knowledge of a risk of serious injury and recklessly disregarded it. Rather, Darden admits that he received significant amounts of treatment from Dr. Davis, as well as supplemental treatment from Dr. Goldberg, an orthopaedic surgeon. Davis states that he was seen by Dr. Davis at least ten times in the three-month period following his injury. During that time, Darden admits Dr. Davis took x-rays of his back, provided him with medication, and tried various treatments, including exercise and bed rest. After Darden continued to complain of serious pain, Dr. Davis referred Darden to Dr. Goldberg. Dr. Goldberg examined him, prescribed the MRI, and followed-up with regard to the results. Darden objects to his diagnosis, the doctors' interpretation of his MRI report, the course of treatment, and the inability of the doctors to manage his alleged pain. However, because "there may, for example, be several ways to treat an

illness," prison doctors have been accorded considerable latitude in the diagnosis and treatment of prisoners. *Durmer v. O'Carroll*, 991 F.2d 64, 67 (3d Cir. 1993). While the treatment by Drs. Davis and Goldberg might not have been wholly successful, and while Darden may be still be suffering from pain, at most these allegations constitute malpractice, and in this case, do not rise to the level required by deliberate indifference. *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).[8] As such, the court finds that Darden's complaint is so insubstantial as to not allege a federal claim against defendants Davis and Goldberg, and will grant their motions to dismiss under 12(b)(1).[9]

III. FAILURE TO STATE A CLAIM

The court now turns to the remaining defendants' motions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Turner, Crowe, and Gubernick argue that, even taking all allegations in the complaint as true, Darden has failed to state a claim under § 1983. As noted above, in order to state a claim under § 1983, Darden must allege that defendants, (1) while acting under color of state law, (2) deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States. *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1141 (3d Cir. 1995). Defendants argue that this second requirement is not met, and that Darden has failed to state a claim of deliberate indifference to serious medical needs under the Eighth

[8]Plaintiff acknowledges that he was seen and treated by the nurses and doctors on numerous occasions. His complaint is that he disagreed with their treatment or did not feel that he was being given sufficient treatment. Unfortunately, for the plaintiff, that is not a sufficient allegation to constitute "deliberate indifference."

[9]As there is no federal constitutional violation, the court does not need to determine whether plaintiff has sufficiently alleged that Drs. Goldberg and Davis were state actors at the time of treatment.

Amendment. I agree.

A. Legal Standard for Motions to Dismiss Pursuant to Rule 12(b)(6)

When deciding to dismiss a claim pursuant to Fed. R. Civ. P. 12(b)(6), the court is testing the sufficiency of a complaint. *Johnsrud v. Carter*, 620 F.2d 29, 33 (3d Cir. 1980) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In making its ruling, the court must accept as true all well-pled allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, to determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996); *Colburn v. Upper Darby Township*, 838 F.2d 663, 665–66 (3d Cir. 1988) (citations omitted). "The issue is not whether [the claimant] will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997).

In general, courts will grant a motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). In the case of *pro se* plaintiffs, the Court has held that "a pro se complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers' and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *See Estelle v. Gamble*, 429 U.S. 97 (1976) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)).

B. Eighth Amendment Claims for Deliberate Indifference to Serious Medical Needs

a. Claims Against Defendants Turner and Crowe

After reviewing the complaint, the amended complaint, and the attached exhibits, the court finds that no federal relief can be granted to Darden under any set of facts that could be proved consistent with Darden's allegations. While I stated above that Darden alleged a serious medical condition, he has not sufficiently alleged Nurses Turner or Crowe were deliberately indifferent. Even holding Darden's complaint to the less stringent pleading standards of *pro se* plaintiffs, Darden's complaint does not suggest that Nurses Turner or Crowe drew the inference that there was an excessive risk to Darden's health or safety at the time of his fall. *Spruill*, 372 F.3d at 236 (stating that while a *pro se* complaint should be read liberally, the plaintiff still must suggest that defendant was aware of the risk and intentionally disregarded it); *Outterbridge v. Commonwealth of Pennsylvania Department of Correction*s, 2000 U.S. Dist. LEXIS 7762, * 7 (E.D. Pa. June 7, 2000) (finding that even where plaintiff alleged the medical professionals "consciously disregarded" abnormal laboratory results resulting in the inmate's death, they did not sufficiently allege that the defendants knew of and disregarded the serious risk to the decedent). Rather, Darden alleges Nurse Turner "neglected to use professional judgment" and was "negligent" at the time of his fall in securing him the medical care he believed was necessary. However, allegations of negligence and failing to use professional judgment, even if true, do not rise to the level of a constitutional violation, and while not sanctioned by this court, only result in a state action for malpractice. In addition, while Darden alleges Nurse Crowe consulted with him regarding his injury and treatment, and arranged for multiple visits with Dr. Davis, he disagrees with the number of professional medical examinations that he needed. As noted above, Darden met with various medical professionals more than ten times over three

months, and received x-rays, medication, and an MRI. As objections to a course of treatment are not sufficient to arise to the level of a constitutional violation, Darden has no claim against Nurse Crowe. As such, I find that it appears beyond doubt that Darden can prove no set of facts in support of his claim that would entitle him to relief against Nurses Turner and Crowe, and I will grant their motions to dismiss.[10]

b. Claims against Defendant Gubernick

Because I will dismiss the claims against all the medical defendants in this case, I will also dismiss the § 1983 claim against Director Gubernick. According to plaintiff's complaint, Gubernick committed extreme indifference by deferring to the medical department's decisions. However, Gubernick cannot have violated plaintiff's Eighth Amendment rights where the medical department did not. Moreover, prison officials generally cannot be held liable for failing to respond to a prisoner's medical complaints when the prisoner, at the time, was receiving treatment from prison doctors. *Durmer v. O'Carroll*, 991 F.2d 64, 69 (3d Cir. 1993). Because Darden alleges that he was receiving treatment at the time of his complaints, and because that treatment was not in violation of the Eighth Amendment, there is no theory under which a fact-finder could find Director Gubernick liable under § 1983. His motion to dismiss will therefore be granted.

III. CONCLUSION

For the above stated reasons, the motions to dismiss of defendants Goldberg, Davis, Crowe, Turner, and Gubernick will be granted, and plaintiff's complaint will be dismissed with

[10]Defendant Davis also filed a motion to dismiss under Rule 12(b)(6) for failure to state a claim, which I would also grant had I not already granted his Rule 12(b)(1) motion.

prejudice.

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DEREK C. DARDEN	:	CIVIL ACTION
	:	
vs.	:	
	:	
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O R D E R

AND NOW, this _____ day of January, 2006, upon consideration of the defendants' motions to dismiss and /or for summary judgment, and plaintiff's response thereto, **IT IS HEREBY ORDERED** that:

1. The motion to dismiss of defendant Davis (Document No. 28) is **GRANTED** and all claims against Dr. David Davis are **DISMISSED** with prejudice.

2. The motion to dismiss of defendant Goldberg (Document No. 16) is **GRANTED** and all claims against Dr. Richard A. Goldberg are **DISMISSED** with prejudice.

3. The motion to dismiss of defendants Turner and Crowe (Document No. 53) is **GRANTED** and all claims against Laurey Turner and Joan Crowe are **DISMISSED** with prejudice.

4. The motion for summary judgment of defendants Crowe and Turner (Document No. 53) is **DISMISSED** as moot.

5. The motions to dismiss of defendant Gubernick (Document No. 26 and Document No. 43) are **GRANTED** and all claims against defendant Harris Gubernick are **DISMISSED** with prejudice.

6. All claims against all parties having been dismissed with prejudice, the clerk is directed to mark this action **CLOSED FOR STATISTICAL PURPOSES**.

William H. Yohn, Jr., Judge